

Message Text

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PAGE 01 STATE 099389
ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 EB-07 TRSE-00 AID-05 CEA-01
CIAE-00 COME-00 EA-07 FRB-03 INR-07 IO-13 NEA-10
NSAE-00 OPIC-03 SP-02 LAB-04 EPG-02 SIL-01
AGRE-00 OMB-01 INRE-00 NSC-05 SS-15 NSCE-00 SSO-00
USIE-00 AF-10 ARA-06 /118 R

DRAFTED BY L/EB:SBOND
APPROVED BY EB/IFD/OMA:CCUNDIFF
L - SSCHWEBEL
EB/IFD/OIA - RKAUZLARICH
TREASURY - DPRITCHETT
EUR/RPE:PLAASE (SUBS)
EB/ORF/FSE:LRAICHT (SUBS)
-----030003Z 100651 /70
O 022334Z MAY 77
FM SECSTATE WASHDC
TO USMISSION OECD PARIS IMMEDIATE

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E.O. 11652: N/A

TAGS: OECD, CIEC, EFIN

SUBJECT: CIEC FINANCIAL AFFAIRS COMMISSION

REF: A. OECD 12536, B. GANTZ/BOND TELECON 5/1/77.

PASS DAVID GANTZ, CIEC DELEGATION

1. CONFIRMING POINTS NOTED IN REF B, ALL PROPOSED
LANGUAGE IN REF A ACCEPTABLE EXCEPT FOR THAT CONTAINED
IN PARA 4 OF REF A. (WE UNDERSTAND FROM REF B THAT
BRACKETS ARE DELETED FROM PARA 9 OF REF A.) THIS
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PARAGRAPH, A VERSION OF THE PRINCIPLE OF "PERMANENT
SOVEREIGNTY" IS PROBABLY MOST CAPABLE OF HARMING US
(AND OTHER DEVELOPED COUNTRY) INTERESTS.

2. BASIC PROBLEM WITH PARA 4 OF REF A IS THAT IT IS
EXPLICIT RECOGNITION OF RIGHT OF STATES TO DETERMINE
CONDITIONS UNDER WHICH FOREIGN INVESTMENTS OPERATE,

WITHOUT MENTION OF ESSENTIAL POINT THAT THIS RIGHT MUST BE EXERCISED IN A MANNER CONSISTENT WITH INTERNATIONAL LAW.

3. PARAS 6B AND C OF G-8 TEXT DO NOT, REPEAT NOT, RESOLVE THIS PROBLEM BECAUSE WHILE PARA 3 OF G-8 TEXT IS UNCONDITIONAL STATEMENT OF RIGHT OF STATES TO REGULATE FOREIGN INVESTMENT, PARAS 6B AND C ARE MERELY TWO OF SEVERAL HORATORY PRINCIPLES WHICH SHOULD BE FOLLOWED IF, REPEAT IF A STATE WISHES TO ESTABLISH A FAVORABLE INVESTMENT CLIMATE. THEY ARE NOT MANDATORY PRINCIPLES. PARAS 6B AND C THEREFORE ARE NOT, REPEAT NOT A RESTRICTION OR LIMITATION ON THE RIGHT SET OUT IN PARA 3. DANGER THEREFORE EXISTS THAT IN UN CODE OF CONDUCT EXERCISE AND ELSEWHERE, G-77 WILL UTILIZE PARA 3 LANGUAGE AS AGREED STATEMENT, THUS UNDERMINING US POSITION THAT ANY REFERENCE TO PERMANENT SOVEREIGNTY MUST BE MODIFIED BY REFERENCE TO INTERNATIONAL LAW.

4. US DEL, FOR ABOVE REASONS, CANNOT ASSOCIATE ITSELF WITH TEXT CONTAINING LANGUAGE IN PARA 4 OF REFTL. IT SHOULD, IN STRONGEST TERMS, MAKE KNOWN TO G-8 OUR PROBLEMS WITH THE LANGUAGE AND ENDEAVOR TO OBTAIN G-8 AGREEMENT TO EITHER OF FOLLOWING ALTERNATIVES:

(A) VIRTUES OF INITIAL US PROPOSAL FOR PARA 3 SHOULD BE RESTATED. THIS LANGUAGE IS EXTREMELY CLOSE TO THAT OF G-19; CLOSER THAN THE ORIGINAL G-8 PROPOSAL. FURTHERMORE, BY STATING WHAT ALL COUNTRIES CAN AGREE LIMITED OFFICIAL USE

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TO, NAMELY THAT COUNTRIES CAN DETERMINE THE ROLE FOREIGN INVESTMENT IS TO PLAY IN THE DEVELOPMENT PROCESS, THERE IS NO NEED TO GO INTO THE USUAL PERMANENT SOVEREIGNTY VS. INTERNATIONAL LAW DISPUTE. THE G-8 CAN POINT OUT TO THE G-19 THAT WHILE THERE IS NOT YET INTERNATIONAL AGREEMENT ON THE ISSUE OF PERMANENT SOVEREIGNTY, THERE IS STILL THE OPPORTUNITY TO MAKE A POSITIVE STATEMENT SUCH AS THAT CONTAINED IN PARA 3 OF G-8 TEXT. TO AVOID PREJUDICING POSITIONS, G-8 COULD INSERT THE PHRASE "INTER ALIA" BETWEEN "DETERMINE" AND "THE ROLE" IN PARA 3 OF US TEXT. THIS STILL LEAVES (OPEN FOR G-19 A FUTURE AGREEMENT ON PERMANENT) SOVEREIGNTY.

(B) AS THE G-8 IS APPARENTLY WILLING TO INSERT ONE REFERENCE TO INTERNATIONAL LAW IN THEIR TEXT, (PARA 9 OF REF A)"US DEL-COULD ACCEPT G-8 LANGUAGE IN PARA 4 OF REF A IF PHRASE "CONSISTENT WITH INTERNATIONAL LAW" IS REINSERTED BETWEEN "DETERMINE" AND "THE CONDITIONS," REFERENCE TO INTERNATIONAL LAW COULD THEN BE DELETED

FROM PARA 6C OF G-8 TEXT.

VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
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Control Number: n/a
Copy: SINGLE
Sent Date: 02-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Format: TEL
From: STATE
Handling Restrictions: n/a
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